



University of Hawai'i at Mānoa

Ethnic Studies Department

1859 East-West Road • Room 115 • Honolulu, Hawai'i 96822

Telephone: (808) 956-8086 • Facsimile: (808) 956-9494

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Assistant Secretary John Berry:

Aloha. Please accept the enclosed as my written testimony for the "Reconciliation Process" of the federal government with Native Hawaiians.

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Mahalo,

Dr. Davianna Pomaikai McGehee

Restoring Sovereign Hawaiian Governance

By Davianna Pomaika'i McGregor,

Associate Professor of Ethnic Studies, University of Hawai'i (Manoa)

Hawaiians are inherently sovereign, but lack a government through which to exercise that sovereignty . Efforts are underway to reconstitute a government for a sovereign Hawaiian nation and there are many organizations who are involved at different levels in the process. ¹ In the absence of a national government, 'ohana (extended family) networks survive as the primary traditional social unit of organization, particularly in rural Hawaiian communities.

Since the overthrow of the Hawaiian monarchy on January 17, 1893 Hawaiians have been treated as a defeated people in their homeland, urged to assimilate, conform to and accept white America society, even as their own language, culture, land base and people were at risk of extinction. The government through sovereignty had been exercised was dismantled, and therefore, the political status of Hawaiians was suppressed.

The quest to restore Hawaiian sovereignty began over 100 years ago with Queen Lili'uokalani herself appealing to the U.S. Congress and American people to restore the monarchy. ² Her motto, "Onipa'a" "Holding together the shifting tides of change" urged

¹ Ka Lahui Hawai'i, claiming to represent 20,000 members, has already held four constitutional conventions which has established their own national legislature, governor, and council of elders. The Office of Hawaiian Affairs is a state department which has 60,000 Hawaiians enrolled as voters for special elections to select the Hawaiian trustees who govern the agency. The office is committed to supporting a process for the Hawaiian community to vote for delegates to a convention that will draft a constitution for approval by a broad spectrum of Hawaiians. The State Council of Hawaiian Homes Associations claims to represent 30,000 Hawaiians who are settled on Hawaiian Homelands. They seek immediate and direct control over the homestead lands they live on and use. They are willing to participate in a convention process, but they really seek home rule over the Hawaiian Homelands. There are several organizations which seek to totally decolonize Hawai'i. Smaller in number than the advocates of nation-within-nation status, they nevertheless comprise an articulate, vocal, and determined sector of the community. Included among the organizations seeking total independence from the U.S. are the Institute for the Advancement of Hawaiian Affairs, the 'Ohana Council, Ka Pakaukau, the Pro-Hawaiian Sovereignty Working Group, the Sovereign Kingdom of Hawai'i, and the Kamehameha Probate Trust of Hawai'i.

² Lili'uokalani, Hawaii's Story By Hawaii's Queen, Boston: 1898, reprinted Tokyo: Tuttle, 1977.

her people to persevere, not give up, pursue the right to exist as a people - to live practice and perpetuate the language, culture, science, religion of the ancestors. Succeeding generations of Hawaiians sought sovereign control over the lands and resources of their nation and succeeded in having two public land trusts established for Native Hawaiians, but controlled by the State of Hawai'i - the Hawaiian Home Lands and the ceded public lands trust.

Remarkably, especially in the three decades after Hawai'i became a state, the consciousness, pride in, and practice of Hawaiian cultural and spiritual customs and beliefs heightened rather than declined. Hawaiian language pre-schools and Hawaiian language immersion classes in Hawai'i public schools began to be established in the 1980's. Hula halau or schools which teach traditional Hawaiian dance and chant flourished. Hawaiian music evolved into new forms of expression and gained greater popularity. Hawaiian studies from the elementary to university level was established as part of the regular curricula. Traditional navigational arts and skills were revived with the transpacific voyages of the Polynesian Voyaging Society on the Hokule'a. The traditional practice of aloha 'aina gained prominence and rural Hawaiian communities, strongholds of traditional Hawaiian subsistence lifestyles, gained a new significance.

This revival has been crucial to the survival of Hawaiian culture as the social and economic conditions of the Hawaiian people have stagnated or declined while those of the general population have improved and as natural, cultural and economic resources in rural Hawaiian communities have been assaulted by tourist, commercial, and industrial development.

Native Hawaiians on the Eve of the Millennium

In 1988, approximately 218,000 Ka Po'e Hawai'i comprised 20.7 percent of the overall Hawai'i population. Of that amount, only 10,000 were pure Hawaiian and another

70,000 were estimated to have half Hawaiian ancestry or more. Thirty-two percent of all Hawaiians still lived outside of O'ahu.³

In 1990, Hawaiians earned low incomes, comparable to the most recently arrived immigrant groups, held low status jobs, and had the highest rate of unemployment of all the ethnic groups in the islands. By contrast, the descendants of Caucasian, Japanese and Chinese immigrants earned high incomes and held a greater portion of the managerial and professional jobs in Hawai'i. Moreover, a significant portion of the native Hawaiians earned incomes that were insufficient to provide for their families and thus received public assistance to supplement their incomes. Among these, some depended entirely upon welfare support to meet their day-to-day needs.⁴

In 1992, 35 percent of the adult inmate population in state correctional facilities were of Hawaiian ancestry.⁵

In 1980, Hawaiians had the lowest life expectancy among the ethnic groups in Hawai'i, at 67.6 years compared to 73 for Caucasians, 77 for Japanese, 72 for Filipinos, and 76 for Chinese.⁶ In 1989, the Hawaiian infant mortality rate was 11.8 per thousand.

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The difference in the two sources is due to the difference in handling persons of mixed parentage. The census did not have a mixed category and assigned persons of mixed ancestry to one of the categories on the basis of self-identification or the race of the father. The Health Surveillance Program bases it on birth statistics. The figure of 70,000 is from Office of Hawaiian Affairs. "Population Survey / Needs Assessment, Final Report." Honolulu: Office of Hawaiian Affairs, 1986. In a study of the Health Surveillance Program data, the Office of Hawaiian Affairs estimated that there were 208,476 Hawaiians in Hawai'i in 1984, out of which 72,709 had 50 percent to 99 percent Hawaiian ancestry and 8,244 had 100 percent Hawaiian ancestry.

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⁵ Department of Public Safety - Corrections Division, "Distribution of the Inmate Population By Ethnicity and Facility As Of June 30, 1992." The ethnic breakdown of the adult inmate population was as follows Black (5.3%), Caucasian (22.9%), Chinese (0.9%), Filipino (7.9%), Hawaiian/Part Hawaiian (35%), Japanese (3.4%), Korean (0.9%), Samoan (3.9%), Other 16.1%)

⁶ George S. Kanahale, Current Facts and Figures About Hawaiians (Honolulu: Project WAIHAHA, 1982), p. 8.

This represented 44 percent of the infant deaths in the state in 1989. Heart disease was the major cause of death among Hawaiians. While Hawaiians did not have the highest incidence of cancer, they had the highest mortality rates for most cancers. Hawaiian men had the highest incidence of lung cancer and Hawaiian women had the high rates of breast cancer. Hawaiians over age 65 had the highest incidence of chronic diseases and were disproportionately afflicted by diabetes. ⁷

These socio-economic statistics reflect a disparity in the standard of living between native Hawaiians and Caucasians, Japanese and Chinese in Hawai'i. They also indicate a high degree of alienation from the social system and the political power structure of modern Hawai'i. On one hand, it represents the effect of institutionalized cultural barriers which prevent equal access to opportunities in the educational system, health care delivery systems and adequate representation in the judicial system. ⁸ On the other hand, it reflects the persistence of traditional lifestyles in rural-based Hawaiian communities where Hawaiians did not assimilate into Westernized Hawai'i society.

[Much of the socio-economic disorientation suffered by Hawaiians today can be attributed to dislocation from ancestral homelands and related disruptions to the traditional family and social order. These statistics reflect the individual and collective pain, bitterness and trauma of a people whose sovereignty has been and remains suppressed; who are dispossessed in their own homeland; and who lack control over the resources of their ancestral lands to provide for the welfare of their people.]

⁷ Papa Ola Lokahi, "Native Hawaiian Health Data Book, (Honolulu: 1992).

⁸ Alu Like, "Summary of the Analysis of the Needs Assessment Survey and Related Data," 1976. Kamehameha Schools / Bishop Estate, 1983. Native Hawaiian Health Research Consortium, Mental Health Task Force, Alu Like, Inc. E Ola Mau: Native Hawaiian Health Needs Study: Mental Health Task Force Report (Honolulu: Native Hawaiian Health Research Consortium, Alu Like, Inc., 1985).

The Threat To Hawaiian Rural Communities

Of singular importance to the perpetuation of the Hawaiian people are isolated and undeveloped rural communities which were historically bypassed by the mainstream of social and economic development. Only a handful of rural Hawaiian communities have survived the onslaught of post-statehood development - the islands of Moloka'i and Ni'ihau; the districts of Hana and Kahakuloa on Maui; Kahana, Hau'ula, La'ie, and sections of the Wai'anae Coast on O'ahu; the districts of Ka'u, Puna and small communities in Kona, excluding Kailua; Kekaha and Anahola on Kaua'i.

Botanists who study the volcanic rainforest have observed that eruptions which destroy large areas of forest land, leave oases of native trees and plants which are called kipuka. From these natural kipuka come the seeds and spores for the eventual regeneration of the native flora upon the fresh lava. Rural Hawaiian communities are cultural kipuka from which Native Hawaiian culture can be regenerated and revitalized in the contemporary setting. Protection of the natural resources and the integrity of the lifestyle and livelihoods of the Hawaiians in these rural districts is essential to the perpetuation of Native Hawaiian culture today and for future generations.

Hawaiians in these rural areas did not fully assimilate into the changing social system. Instead, they pursued traditional subsistence livelihoods in which they applied cultural customs beliefs, and practices. They also sustained extended family networks through sharing and exchange of food, work, and services. Rural Hawaiians are stubbornly independent, feel a strong attachment to their land and to traditionally cultural customs and practices. They often demonstrate a disdain and mistrust of external influences.

Negative impacts upon Native Hawaiian rural communities and their natural resources are becoming increasingly intense and severe. Access to forest and mountain areas for hunting and gathering of native plants for medicine are being cut off. The loss of subsistence gathering opportunities has disrupted the mutual sharing and exchange that is

an integral part of 'ohana (extended family) networks in the rural communities. Traditional and customary management and stewardship over the land by generations of the same Hawaiian families is being threatened by new owners from outside Hawai'i. This contributes to demoralization, fragmentation and/or polarization in these formerly cohesive cultural enclaves. If these last remaining Hawaiian enclaves do not survive into the 21st Century, with the resources that make subsistence economic activities in these areas viable, then, over the next century, Ka Po'e Hawai'i, as a distinct people will gradually disappear. Hawaiians will continue to live and reproduce as ethnic Hawaiians and exist side-by-side with other ethnic groups in Hawai'i. However, they will eventually lose the language, culture, religion, land base and livelihoods which distinguish them as the original settlers of these islands. They would completely assimilate into the mainstream of local Hawai'i society.

Significance To Hawai'i's "Local" People

The dynamics described above relative to the survival of the Hawaiian culture also applies to "local" culture. At the core of "local culture" is Hawaiian culture. "Local" culture represents an amalgamation of the Hawaiian culture with the cultures of the various immigrant groups who settled in Hawai'i.

Most of the immigrants who were imported to work on Hawai'i's plantations were peasant farmers in their countries of origin. With the majority of Hawaiians who were planters and fishers, they shared a respect for the land and a strong reliance on extended family relations. Loyalty, respect, and caring for family elders and the overall well-being of all family members were important values that came to characterize "local" people.

In rural plantation communities, the immigrant workers shared the common experience of oppressive working conditions, living in plantation camp housing, and being in constant debt to the plantation store. Children of immigrant workers and Native Hawaiians alike attended Hawai'i's common public schools. There they were socialized by the American school system. The children learned together, ate and shared meals together,

and communicated across cultural barriers in pidgin dialect. They learned to hunt for pigs and gather fruits in the forest. They caught fish or gathered marine life from common fishing grounds. Among the immigrant groups, particularly the second and third generations, the rate of intermarriage was very high. The International Longshoremen and Warehousemen's Union (I.L.W.U.) was also a force in the forging of a common identity among immigrant workers and Native Hawaiians in rural plantation communities. They emphasized organizing for better wages and living conditions as one strong multi-ethnic union, rather than as ethnic workingmen's associations. "An injury to one, is an injury to all" and "Equal pay for equal work" were principal organizing slogans.

Today, "local" cultural customs and pidgin English flourish in the rural setting, naturally as part of the day-to-day lifestyle. In rural agrarian communities, subsistence fishing, hunting and gathering is a major source of food, healing herbs and comprises a major form of recreation. Families know each other and watch after each other's children. Subsistence engenders an active network of sharing and exchange between related and non-related households. This is important for sustaining 'ohana relationships. Large gatherings for life cycle events - birthdays, weddings, graduations, funerals, etc. - are still affordable because of the sharing of food gathered through subsistence activities.⁹

The phasing out of pineapple and sugar plantations in rural communities have also put local culture at the risk of gradually fading away over the next two generations. The rural plantation communities were primary source for the regeneration of "local" culture. To the extent that these areas border upon rural Hawaiian communities, the persistence of the Hawaiian "cultural kipuka" will also support the perpetuation of "local" culture.

Many "local" people do recognize the right of Native Hawaiians to re-establish an autonomous government. It is viewed as a form of justice and reciprocity to the original

⁹ Moloka'i Subsistence Task Force, Governor's Moloka'i Subsistence Task Force Preliminary Report, Honolulu: Department of Business and Economic Development and Tourism, January 1994.

inhabitants of the islands. The Hawaiians have a saying, "Aloha mai no, aloha aku." It translates into "When aloha is given, aloha should be returned." Recognition of the right of the Hawaiian people to be sovereign and to perpetuate the culture, language and heritage of their ancestors is a giving back to the Hawaiian people for all that they have given and shared over the past two centuries.

It is in the interest of everyone in Hawai'i to eliminate the disparity in social and economic conditions between Hawaiians and the major ethnic groups in Hawai'i. Creating equal opportunity for access to education, health care, representation in the justice system, employment and housing is common goal.

The Movement For Hawaiian Sovereignty

There are numerous Hawaiian organizations working to uplift the Hawaiian people and perpetuate the Hawaiian culture. A listing of the issues around which various Hawaiian organizations have formed since statehood would result in a checklist of the concerns that sovereignty is hoped to remedy. Hawaiians seek to improve and uplift Hawaiian health, education and standard of living. Hawaiians seek protection and perpetuation of natural and cultural resources essential for religious, cultural, and subsistence custom, belief, and practice. Hawaiians seek full redress for past injustices; restitution of all of the territory of the Hawaiian nation; compensation for mismanagement and destruction of national lands and natural resources; and most important, the re-establishment and recognition of a government to exercise sovereignty and self-determination. One hundred years later, conditions are changed but the underlying need and demand remain the same - the right of a people and a nation to self-determination.

On January 17, 1993, the 100th anniversary of the overthrow, over 12,000 Hawaiians and others gathered at 'Iolani Palace to protest the illegal overthrow of the Hawaiian monarchy by American planter, missionary and business interests backed by U.S. naval forces. This was not a new expression of Hawaiian rights, but a long, deep-seated demand for redress and restitution of ea (sovereignty) and pono (justice) in Hawai'i.

Finally, after 100 years, the U.S. government and the United Church of Christ actually responded to the voices seeking a recognition of Hawaiian sovereignty. In November 1993, the U.S. Congress passed and President Bill Clinton signed a resolution offering a formal and official apology to the Hawaiian people for the U.S. role in the overthrow of the Hawaiian monarchy on January 17, 1893. It read in part,

Now, therefore, be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

The Congress -

. . . apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawai'i on January 17, 1898 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination; expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawai'i, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people;

Earlier, in January 1993, the General Synod of the United Church of Christ, successor to the American Board of Commissioners for Foreign Missions which sponsored Presbyterian missionaries to Hawai'i in the nineteenth century, had offered its own apology for the complicity of church leaders and members in the conspiracy to overthrow the Hawaiian monarchy.

Perhaps the most significant action by the U.S. Congress and the Clinton administration in the centennial year of the overthrow was a measure in the military appropriations act to permanently stop the bombing of the sacred Hawaiian island of Kaho'olawe. The island was officially returned to the state of Hawai'i with traditional Hawaiian ceremonies on May 7, 1994. Congress authorized the appropriation of up to

\$400 million over the next 10 years to clear the island of ordnance and restore its natural and cultural resources. As a focal point of Hawaiian activism since 1976, stopping the bombing of Kaho'olawe is a major victory for the Hawaiian movement. Moreover, under state law, the island will be held in trust with other Hawai'i national lands and be turned over to the sovereign Hawaiian nation when it is re-established and recognized by the U.S. federal and Hawai'i state governments. This is the first of the Hawaiian national lands which the State of Hawai'i has agreed to repatriate to the Hawaiian people's nation.

Apologies and the return of Kaho'olawe are a beginning point. Indigenous Hawaiians seek full redress for past injustices; restitution of all the territory which was originally part of their nation; compensation for mismanagement and destruction of national lands and natural resources; and, most important, the re-establishment and recognition of a government to exercise sovereignty and self-determination. These are matters for negotiation on a nation to nation basis between the Hawaiian people's nation and the U.S. and Hawai'i state governments.

In May, 1993 the Hawai'i State Legislature, in response to a groundswell of support for Hawaiian sovereignty, agreed to fund a process for the indigenous Hawaiian people to draft an organic document for the governance of a Hawaiian sovereign nation. They set up a Hawaiian Sovereignty Advisory Commission to advise the legislature on the following:

- (1) Holding a plebiscite to determine the will of the Hawaiian people to call a democratically convened convention for the purpose of achieving consensus on an organic document that will propose the means for Hawaiians to operate under a government of their own choosing. (2) Providing for a mechanism to democratically convene a Hawaiian convention so that Hawaiians may openly and freely discuss and decide the form and structure of that government; and (3)

Describing the process for the conduct of fair, impartial and valid elections including a plebiscite.¹⁰

The report of the Hawaiian Sovereignty Advisory Commission was accepted by the 1994 Legislature and the Commission was reorganized into the Hawaiian Sovereignty Elections Council (HSEC).

In July 1996, the HSEC mailed out 81,507 ballots to registered Hawaiian voters asking, "Shall the Hawaiian people elect delegates to propose a Native Hawaiian government?" A total of 30,423 ballots were cast, representing 37% of the registered voters. Of these, 22,294 or 73% of the ballots cast voted YES and 8,129 or 27 % of the ballots cast voted NO.

Due to a state budget crisis, the Hawai'i State Legislature did not go on to fund the actual election of delegates. Instead, members of the HSEC formed an independent non-profit organization, named Ha Hawai'i which raised the necessary funds to hold an election of delegates for a Native Hawaiian Convention on January 17, 1999. Out of 101,000 registered voters only 8,867 or 9 % cast ballots. There were 77 delegates elected to represent Hawaiians from the various islands and overseas Hawaiians, primarily in the continental United States.

Nation-Within -Nation And Total Independence

There are two primary models for Hawaiian sovereignty - achieving nation-within-nation status, like other Native Americans and achieving independence from the U.S., under free association status like the republics in Micronesia or as an independent state like the island nations of the South Pacific.

Hawaiian groups tend to pose "nation-within-nation" and "independence" as two competing models.¹¹ However, it is my contention that these are actually complementary.

¹⁰ Act 359, Hawai'i State Legislature, 1993.

¹¹ Ka Lahui Hawai'i, the Office of Hawaiian Affairs, the State Hawaiian Homes Association, and the Association of Hawaiian Civic Clubs are the four entities with the largest constituencies of Hawaiians. In recognition of their large memberships, the Hawai'i State

In fact, we are really looking at one status which will address the unique and special conditions of the indigenous Hawaiian people and one status which will address the broader issues of decolonization for the indigenous Hawaiians in partnership with the "Local" multi-ethnic population.

What is called nation-within-nation status is what has thus far been accorded to Native American nations in the U.S. Given developments in International Law and in the work of the U.N. Working Group On Indigenous Peoples, Hawaiians may seek the status of a nation-within-a-nation with the right of autonomy or self-determination. It is important and crucial to emphasize that this status should be accorded to the indigenous Hawaiian

Legislature guaranteed seats on the Hawaiian Sovereignty Advisory Commission to each of these four organizations. Of the four, only Ka Lahui Hawai'i refused to name a representative to be appointed by the Governor of Hawai'i to the commission. Ka Lahui Hawai'i, claiming to represent 20,000 members, has already held four constitutional conventions which has established their own national legislature, governor, and council of elders. As strong advocates for the nation-within-nation status, Ka Lahui Hawai'i seeks recognition from the U.S. Congress and the State of Hawai'i as the nation of Hawaiians to exist within the nation of the United States of America. In the 1993 legislative session they introduced a bill calling for the transfer to their nation of all of the Hawaiian national lands controlled by the state government. The Office of Hawaiian Affairs is a state department which has 60,000 Hawaiians enrolled as voters for special elections to select the Hawaiian trustees who govern the agency. The office is committed to supporting a process for the Hawaiian community to vote for delegates to a convention that will draft a constitution for approval by the broadest possible spectrum of Hawaiians. After ratification of such a constitution, the Office of Hawaiian Affairs will seek recognition for the government established under such a constitution from the U.S. federal and Hawai'i state governments. This is basically a blueprint for seeking status as a nation-within-a-nation. The State Hawaiian Homes Association claims to represent 30,000 Hawaiians who are settled on Hawaiian Homelands. They seek immediate and direct control over the homestead lands they live on and use. They are willing to participate in a convention process, but they really seek home rule over the Hawaiian Homelands. The statewide Association of Hawaiian Civic Clubs have traditionally represented the more conservative sector of the Hawaiian community. Many have supported the status quo for Hawaiians and are only now beginning to become aware of the historical injustices and claims for redress and restitution for the Hawaiian nation. The clubs have not yet taken a position on a model for sovereignty.

There are several organizations which seek to totally decolonize Hawai'i. Smaller in number than the advocates of nation-within-nation status, they nevertheless comprise a very eloquent, determined, and militant sector of the community. Included among the organizations seeking total independence from the U.S. are the Institute for the Advancement of Hawaiian Affairs, the 'Ohana Council, Ka Pakaukau, the Pro-Hawaiian Sovereignty Working Group, the Sovereign Kingdom of Hawai'i, the Kamehameha Probate Trust of Hawai'i, and the Hawaiian Patriotic Association.

nation whether Hawai'i continues to be a state of the United States of America or whether Hawai'i becomes independent of the United States.

The process of decolonization toward total independence is a status for indigenous Hawaiians to pursue in conjunction with the broader "Local" population. Whether Hawai'i should be an independent country is a decision to be made by all of those who identify culturally, socially, economically, and politically with Hawai'i as their only homeland, those who distinguish themselves as being distinct and unique from Americans as well as from the citizens of the nations from which their ancestors originated.

Hawaiians must be afforded an opportunity to choose for themselves the form of their own self-governance and exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, language, and religions. This would be necessary if Hawai'i remains a part of the United States or if Hawai'i chooses to be independent of the United States. There is an immediate need for the indigenous Hawaiian people to formalize the structure and status of a Native Hawaiian government. Hawaiian includes any descendant of the aboriginal people who, prior to 1778 occupied and exercised sovereignty in the area that now constitutes the State of Hawai'i.

In developing the institutions and laws for the Hawaiian nation, it will be important to root them in traditional Hawaiian cultural, religious, and subsistence customs, beliefs, and practices. Once an organic document is drafted then it must be ratified by all the Hawaiian people. From that point on, Hawaiians will select national leaders to negotiate the terms of redress, restitution, and compensation. The rights of Hawaiians to maintain dual citizenship and still retain the civil rights and privileges that they now enjoy for employment, education, health care, disabilities, retirement, social security, welfare and public services will all be worked through with the U.S. federal, state, and county governments.

When the organic document for a sovereign Hawaiian nation is completed, then national leaders will be selected to negotiate restitution of Hawaiian national lands. These include the 1.2 million acres of the Ceded Public Lands Trust and 200,000 acres of Hawaiian Homelands now controlled by the State of Hawai'i and 400,000 acres of federally held lands. The economic impact of the repatriation of all or a significant portion of these lands would enable the Hawaiian nation to provide for the welfare and a portion of the health and education of Native Hawaiians. The economic impact of Hawaiian sovereignty will ultimately determine the extent of support given to Native Hawaiians by the broader society.

One of the greatest challenges will be to develop a balanced, sustainable economy for the sovereign Hawaiian nation. Hawaiian leaders will need to define the balance between government expenditures, the market economy, and the subsistence sector. The economy must be developed in balance with the natural resources of islands whose fragile ecosystems still sustain a significant amount of subsistence fishing, hunting and farming as part of the preferred cultural lifestyle. Eventually those Hawaiians who are now dependent on welfare should be weaned away from a dependence on the state government.

The rights and entitlement of indigenous peoples to self-governance, to control over certain resources, to determine the education of their children, the communications across international border for trade and exchange of cultural, intellectual, and spiritual development, and a multitude of other areas of life have greatly progressed in the international arena. The United Nations Working Group on Indigenous Populations, the International Labor Organization, the International Indigenous Institute of the Organization of American States, the World Council of Indigenous Peoples, the United Nations General Assembly and other governmental and non-governmental organizations have all taken an active role in clarifying the inherent rights of indigenous peoples of the world. The result of all this work is that there is now an evolving minimum standard of rights of indigenous peoples. The Native Hawaiians are calling to invoke such developing standards to their

circumstances, which standards would go beyond the nation-within-nation status currently accorded to the Native American tribes and nations by the government of the United States of America. Those standards even exceed the provisions now available to Native Hawaiians as set forth in the Hawai'i State Constitutional statutes.

At the same time, the process of decolonization can begin. The people of Hawai'i must be given the choice of determination ranging from integration within the United States of America to emerging as an independent nation.

The basis for claims that the people of Hawai'i should be allowed to re-examine and vote on their political status is based upon flaws in the process through which Hawai'i became a state in 1959 and was removed from the list of the U.N. Committee on Decolonization. In 1946, the United Nations General Assembly, as required under Chapter XI. Article 73 of the UN Charter, "Declaration Regarding Non-Self-Governing Territories," included Hawai'i on the list of its non-self-governing territories together with Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico, and the Virgin Islands. By this action the U.S. was required to assist the territory in achieving self-government by opting for one of the following three alternatives, (a) Complete independence from any other state; (b) Free Association with another state; and (c) Complete integration into another state.¹²

In 1959, in accordance with the Admission Act of March 18, 1959, a statehood plebiscite was held. The plebiscite provided that the qualified voters of Hawai'i adopt or reject three propositions which had to be adopted for Hawai'i to become a state: (a) "Shall Hawai'i be admitted into the Union as a state?" (b) acceptance of the boundaries of the State, and (c) acceptance of all the provisions contained in the Statehood Bill. Any

¹² Rob Williams, esq. Working Paper for "Status and Entitlements of Hawaiian Natives" Study funded by the Ford Foundation to the Native Hawaiian Advisory Council, 1992 - 1993; Hawaiian Sovereignty Advisory Council Report To The Legislature, January 1992. presentation of Russell Barsh, esq. to the Hawaiian Sovereignty Advisory Commission, November 5 - 6, 1993, Hawai'i State Tower.

American citizen who had resided in Hawai'i for one year was eligible to vote. The result of the plebiscite was, 132,938 voters in favor of statehood and 7,854 opposed.¹³

The 1959 plebiscite cannot be considered an adequate exercise in self-determination for the habitual residents of Hawai'i. For a plebiscite to be considered free and fair it must meet the criteria of (1) neutrality of the plebiscite area (2) freedom from foreign occupation; and (3) control of the administration of the plebiscite by a neutral authority. Those who participated in the plebiscite could not be considered the correct "self", reflecting those citizens of Hawai'i or descendants of them who had been denied the continued exercise of their independent nation by the U.S. invasion in 1893. The U.S. government defined the qualifications for voting in such a way that it resulted in the exercise of an altered "self"-determination. By 1959, Hawai'i had been Americanized by years of transmigration from the United States of America and socialization through control over the media, the economy, and the educational, social, legal, and political system of Hawai'i. Following four generations of U.S. control over the society, the United States permitted the "qualified" voters in Hawai'i to become equal American citizens. Qualified voters were American citizens who were residents of Hawai'i for at least 1 year. Only U.S. declared citizens could vote. Those who resisted the American domination and insisted on their Hawaiian citizenship could not vote. The question: "Shall Hawai'i be admitted into the Union as a State?" was unfair and fell short as a measure of self-determination. It failed to afford the people the range of choices from integration within the U.S.A. or to reemerge as an independent nation. The question, "Should Hawai'i be a free and independent nation?" should have been but was never asked. Additional factors which make the 1959 plebiscite fraudulent from the standpoint of being an exercise of self-determination were that the United States stated the question to be asked; supervised the plebiscite process; and counted the votes. The United States military maintained a strong

¹³ Ibid.

presence in the territory when the plebiscite was conducted. Many in the U.S. military also participated in the plebiscite. The United States failed to carry out or to see that others carried out an educational program on the right to independence. In fact, the United States caused fear within the society by promoting a communist scare and a nuclear arms race scare which later proved, on both fronts, to have been fabrications of the government of the day. The United States did not inform the people of their right to self-determination or of the responsibility of the United States to the people regarding decolonization as called for under Chapter XI. Article 73 of the U.N. Charter.

In 1959, after the Hawai'i statehood plebiscite, the U.N. removed Hawai'i from the U.N. list of Non-Self-Governing Territories." As evidence, the U.S. submitted a memorandum to the U.N. Secretary General, the text of the Congressional Act admitting Hawai'i into the U.S. as a state, a Presidential Proclamation, and the text of Hawai'i's Constitution. In response, the U.N. General Assembly, through Resolution 1469 (XIV) expressed the opinion that Hawai'i had effectively exercised the right of self-determination and had freely chosen its status as a state of the Union. This relieved the U.S. of further responsibility to report to the U.N.¹⁴ In August 1993, the People's Tribunal for Hawai'i placed the United States on trial for injustices perpetrated against the Hawaiian people. The Tribunal concluded that Hawai'i should seek to be reinscribed with the U.N. Committee On Decolonization and move toward holding a democratic plebiscite allowing the people of Hawai'i to truly exercise the right of self-determination.

Support for Sovereignty

At this point in history, the majority of indigenous Hawaiians are prepared to begin a process to re-establish Hawaiian sovereignty, but the broader local population will need more time and education to build the confidence to unite in a process building toward decolonization.

¹⁴ Ibid.

A survey on support for sovereignty was conducted by SMS Research in February 1994. The survey asked the question, "Some Hawaiians have said that sovereignty can only be realized by declaring independence from the state, but others feel they can achieve sovereignty by working within the state and federal government. Which do you believe?" In response, 74% favored within the system and 12% favored independence., while 14% were undecided. ¹⁵ The following was the breakdown by ethnic group:

	Total	Hawaiian	Caucasian	Japanese	Filipino
Within					
System	74 %	73%	79%	70%	71%
Independent	12%	11 %	8%	15%	14%
Undecided	14%	16%	13%	15%	15%

This poll is one indication of the lack of support among the broad spectrum of Hawai'i's population, including Hawaiians, for the total independence of Hawai'i. If a vote were to be taken today, the majority of people born and raised in Hawai'i would probably vote for the status quo. Nevertheless, given the developments in the world today, it is possible that future generations may want to seek to decolonize Hawai'i. No action taken today should close off that option to our children or their children's children. The voices who speak for the total independence of Hawai'i should not be silenced, but encouraged to expand the that vision beyond the present political horizon.

Millennium Threats and Opportunities

Two developments in 1999 portend the kinds of threats and opportunities that Native Hawaiians face in the next century.

The first development is a threat in the form of a civil suit, Harold F. Rice, v Benjamin J. Cayetano, Governor of the State of Hawai'i (Rice v. Cayetano). Harold Rice, a fifth generation descendant of American missionaries who became citizens of the

¹⁵ Honolulu Advertiser, February 22, 1994, p. A-1 and A-4.

Hawaiian Kingdom, sued the State of Hawai'i for violating the Fourteenth and Fifteenth Amendments of the U.S. constitution in upholding an explicitly racial restriction limiting the right to vote in statewide elections for the board of trustees of the Office of Hawaiian (O.H.A.). The Office of Hawaiian Affairs was established by the 1978 Constitutional Convention to fulfill the mandate of the State of Hawai'i, established in the 1959 Admission Act. Under the Admission Act, the State of Hawai'i is directed to manage a ceded public lands trust that will, in part, provide for the betterment of conditions of native Hawaiians. The Admissions Act states:

“The lands granted to the State of Hawaii . . . shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiians Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible, for the making of public improvements, and for the provision of lands for public use.”¹⁶

The Office of Hawaiian Affairs was set up to receive a portion of the revenues generated by the ceded public lands trust and use the money to improve the conditions of Native Hawaiians. The office is governed by a board of trustees who are of Hawaiian ancestry and who are elected by qualified voters who are Hawaiian. According to Rice, this is racial discrimination. He applied to register to vote in the 1996 O.H.A. election and his application was rejected.

The federal court of the District of Hawai'i heard his case and ruled that “the United States and the State of Hawai'i had undertaken a special relationship with the descendants of the peoples that inhabited the Hawaiian Islands before 1778.” The court further held that “the State's restriction on the franchise to individuals with Hawaiian blood was not a racial distinction, but a “political” one. Upon appeal, the federal court of appeals in San

¹⁶ The Admission Act, Section 5 (f), March 18, 1959, Public Law 86-3, 73 Stat 4.

Francisco upheld the ruling of the Hawai'i federal district court. Unfortunately, the Supreme Court of the United States accepted the case for certiorari review and heard arguments for the case in October 1999.

The challenge raised by Harold Rice was supported by national groups opposed to affirmative action. Rice could be the forerunner of others who may challenge the just claims, rights and entitlements of Native Hawaiians as increasingly more people move to Hawai'i from America and those born in Hawai'i move to America. In 1990, 44% of the people living in Hawai'i were not born in the islands.¹⁷ These demographic changes may result in a new ethnic balance within Hawai'i's multi-ethnic society which might strain existing relations of tolerance and respect for the Native Hawaiian heritage and culture.

The second development is an opportunity in the form of a "Reconciliation Process" as called for in the Apology Law, Public Law 103-150 (see above). Senator Daniel Akaka, author of the 1993 Apology Law prevailed upon Attorney General Janet Reno and Secretary of Interior Bruce Babbitt to designate officials to represent the Department of Justice and the Department of Interior to initiate a process of reconciliation between Native Hawaiians and the federal government. The Senator announced three objectives he would pursue through the process:

The first is to establish permanency to this continuing dialogue. I am working to establish an office within the Department of the Interior to focus on Native Hawaiian issues . . . My second objective is to help Native Hawaiians and the federal government establish a framework for addressing longstanding issues such as self-determination and ceded lands. My third objective is to take maximum advantage of the time left under the Clinton Administration to focus on actions that will better the social and economic conditions of Native Hawaiians.¹⁸

¹⁷ Jon Matsuoka, Cathleen Lum, Sonja Ome, "Brain Drain or Cultural Drain? The Waning of Hawai'i's Local Populace," University of Hawai'i Manoa School of Social Work, May 1998.

¹⁸ Message of Senator Daniel Akaka, November 8, 1999.

The process began with public meetings on six Hawaiian islands in December 1999 and includes a report issued in February 2000 for action by the U.S. Congress and the Clinton administration. The reconciliation process, when considered next to the Rice v. Cayetano case, can provide a panacea for a Supreme Court ruling in favor of Rice and against the Native Hawaiian people. More importantly, it could result, finally, in an Act of Congress that recognizes a process for the re-establishment a Native Hawaiian government.

Hawaiian sovereignty, once only a dream, will become a reality for future generations of Hawaiians. Among Hawaiians, 75 percent are below the age of 35.¹⁹ It will truly be future generations of Hawaiians who will grapple with the various trials and tribulations of reconstituting a sovereign Hawaiian nation. Ho'ola ka pono no na Hawai'i maoli, restore governance of and for the Native Hawaiian people . Aloha.

¹⁹ Papa Ola Lokahi, Native Hawaiian Health Data Book, Honolulu: 1992.

Outline Overview of Recognition of Native Hawaiian Rights and Land Claims By The U.S. and State of Hawai'i Governments

Prepared by: Davianna Pomaika'i McGregor
Associate Professor, Ethnic Studies Department, UHM

Federal Recognition of Hawaiian Rights and Claims

1921 Hawaiian Homes Act - set aside 200,000 acres of ceded public lands (the original Crown and Government Lands of the Kingdom of Hawai'i which are the Hawaiian National Lands) for exclusive homesteading by Native Hawaiians (50% plus) for \$1 a year for 99 years.

1938 Kalapana Extension Act - allowed Kalapana Native Hawaiians (50% plus) and those accompanied by them to fish and gather in the Volcanoes National Park. Also allowed Kalapana Native Hawaiians to apply for homesteads in the Volcanoes National Park.

1959 Admission Act - Continued the Hawaiian Homes Act but under state administration; Under Section 5f of the Admissions Act identified betterment of the conditions of Native Hawaiians as one of the 5 purposes of the "ceded public lands trust." The other 4 purposes include education; farm and home ownership; public improvements; and public uses.

1974 - Hawaiians are included in the definition of Native Americans for the purpose of benefiting from moneys appropriated under the Native American Programs Act for education, health, job training, etc. Subsequently, Hawaiians have been included in the definition of Native Americans in other legislation including the Native American Education Act, the Native American Health Care Act, the Native American Graves Protection and Repatriation Act; the Native American Religious Freedom Act, etc.

1993 - Public Law 103 - 150 Apology Bill - Apologized to the Native Hawaiian people for the U.S. role in the illegal overthrow of the Hawaiian government and acknowledged that the ceded public lands were acquired through that illegal act. Defined Hawaiians as, "any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai'i.

State recognition of Hawaiian Rights and Claims

The Hawai'i State Constitution, itself, acknowledges that the state has a special relationship to the Native Hawaiian people:

The Preamble states: "We, the people of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage and uniqueness as an island State, dedicate our efforts to fulfill the philosophy decreed by the Hawaii State motto, 'Ua mau ke ea o ka 'aina i ka pono.' We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire.

Article V. Section 4. states: "English and Hawaiian shall be the official language of Hawai'i, except that Hawaiian shall be required for public acts and transactions only as provided by law."

Article X. Section 4 states: "The State shall promote the study of Hawaiian culture, history and language. The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program."

Article XII adopted the Hawaiian Homes Commission Act into the Hawai'i State Constitution. Thirty percent of the state receipts derived from the leasing of cultivated sugarcane lands under any provision of law or from water licenses shall be transferred to the native Hawaiian rehabilitation fund.

Article XII. Section 4 states: "The lands granted to the State of Hawai'i by Section 5(b) of the Admission Act, excluding therefrom land defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act 1920, as amended, shall be held by the state as a public trust for native Hawaiians and the general public."

Article XII. Section 5 establishes the Office of Hawaiian Affairs.

Article XII. Section 7 states: The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Water Code

On May 1987, the Hawai'i State Legislature passed the State Water Code. Appurtenant rights are preserved by the code. "Nothing in this part shall be construed to deny the exercise of an appurtenant right by the holder thereof at any time. A permit for water use based on an existing appurtenant right shall be issued upon application." With regard to Native Hawaiian water rights, the code contains the following provisions:

Section 174C-101 Native Hawaiian water rights.

(a) Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapter 175, relating to the Molokai irrigation system.

(b) No provision of this chapter shall diminish or extinguish trust revenues derived from existing water licenses unless compensation is made.

(c) Traditional and customary rights of ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such traditional and customary rights shall include, but not be limited to, the cultivation or propagation of taro on one's own kuleana and the gathering of hihiwai, opae, `o`opu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes.

(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter.

Native Hawaiian Vote

Acts 359, 200 and 140 - the established the Hawaiian Sovereignty Advisory Council followed by the Hawaiian Sovereignty Elections Council - providing money for Hawaiians to start a process to form a government of their own choosing. In July 1996 81,507 ballots were mailed out to registered Hawaiian voters asking "Shall the Hawaiian people elect delegates to propose a Native Hawaiian government?" A total of 30,423 ballots were cast, representing 37 percent of the registered voters. Of these, 22,294 (73.28% of the ballots cast) voted YES and 8,129 (26.72% of the ballots cast) voted NO.

The return of Kaho'olawe

Chapter 6K of the Hawai'i Revised Statutes states that Kaho'olawe is being held as a trust for eventual transfer to a sovereign Hawaiian entity. Through this law the state acknowledges that there will be a sovereign Hawaiian entity at some point in the future and that nation will have a land base comprised of the Hawaiian national lands now held by the federal and state governments.